

BEFORE THE
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION) DOCKET NO.
On Its Own Motion) 05-0016

Implementation of Section 7-210(i))
of the Public Utilities Act.)
-----)

ILLINOIS COMMERCE COMMISSION) DOCKET NO.
On Its Own Motion) 05-0017

-vs-

MIDAMERICAN ENERGY COMPANY)

Adoption of provisions requiring)
functional separation between the)
gas utility's unregulated retail)
sales of natural gas in the State)
of Illinois and its regulated retail)
gas services in the State of)
Illinois.)

Springfield, Illinois
January 25, 2005

Met, pursuant to notice, at 11:00 A.M.

BEFORE:

MR. JOHN ALBERS, Administrative Law Judge

APPEARANCES:

MS. LINDA M. BUELL
527 East Capitol Avenue
Springfield, Illinois 62794

(Appearing on behalf of the Staff of the
Illinois Commerce Commission)

SULLIVAN REPORTING COMPANY, by

1 Carla J. Boehl, Reporter, Ln. #084-002710

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APPEARANCES:

(Cont'd)

MR. JOHN FEELEY
160 North LaSalle Street, Suite C-800
Chicago, Illinois 60601

(Appearing on behalf of Staff of the
Illinois Commerce Commission via
teleconference)

MR. ROBERT P. JARED
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(Appearing on behalf of MidAmerican
Energy Company)

MR. STEPHEN WU
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Chicago, Illinois 60604

(Appearing on behalf of the Citizens
Utility Board via teleconference)

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WITNESSESDIRECT CROSS REDIRECT RECROSS

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None .

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EXHIBITSMARKEDADMITTED

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PROCEEDINGS

JUDGE ALBERS: By the authority vested in me by the Illinois Commerce Commission, I now call Docket Number 05-0016 and 05-0017. The forward docket was initiated by the Commission on its own motion for the purpose of implementing Section 7-210(i) of the Public Utilities Act, and the latter docket was initiated by the Commission on its own motion versus MidAmerican Energy Company and concerns the adoption of provisions regarding the functional separation between MEC's regulated and unregulated retail gas sales in Illinois.

If I could have the appearances for the record, please?

MR. JARED: Your Honor, on behalf of MidAmerican Energy Company, Robert P. Jared, 106 East Second Street, Post Office Box 4350, Davenport, Iowa 52808.

MS. BUELL: Appearing on behalf of Staff witnesses of the Illinois Commerce Commission, Linda M. Buell and John C. Feeley.

MR. WU: Appearing on behalf of the Citizens

1 Utility Board, Stephen Wu, 208 South LaSalle Street,
2 Suite 1760, Chicago, Illinois 60604.

3 MR. LASICH: Appearing on behalf of MidAmerican
4 Energy Company, Robert Lasich, L-A-S-I-C-H, address
5 is 4299 Northwest Urbandale Drive, Urbandale, Iowa
6 50323.

7 MR. JARED: And, Your Honor, I would note that
8 Mr. Lasich is MidAmerican's vice president of gas
9 supply and trading.

10 JUDGE ALBERS: Oh, he is not an attorney?

11 MR. JARED: Yes, sir, he is an attorney. He is
12 also a vice president.

13 JUDGE ALBERS: Is he representing MidAmerican
14 in an attorney capacity?

15 MR. JARED: He is in an officer capacity in
16 this case, Your Honor.

17 JUDGE ALBERS: My question was going to be if
18 he licensed in Illinois. So if he is not
19 representing them as counsel --

20 MR. JARED: He will not be representing
21 MidAmerican as counsel. I will be and I am licensed
22 in Illinois.

1 JUDGE ALBERS: Thank you. Are there any others
2 wishing to enter an appearance?

3 Hearing none, moving on then as far as
4 preliminary matters, I have the petitions to
5 intervene from the Citizens Utility Board in both
6 dockets and actually let me ask this just for
7 clarity, everyone has entered an appearance in both
8 dockets, is that true?

9 MR. JARED: Yes.

10 MS. BUELL: Correct, Staff is in both
11 proceedings, Your Honor.

12 JUDGE ALBERS: And as far as CUB's petition to
13 intervene in both dockets and then I have
14 MidAmerican's petition to intervene in Docket
15 05-0016, is there any objection from anyone?

16 MS. BUELL: No objection from Staff, Your
17 Honor.

18 MR. JARED: No objection from MidAmerican, Your
19 Honor.

20 JUDGE ALBERS: Hearing no objection, those
21 petitions are granted.

22 Certain of these two dockets are

1 intertwined. I think I will just address the one
2 that has the quicker deadline first, just for
3 starting things off here.

4 The Commission, as I read the new statute,
5 the ICC needs to adopt provisions requiring
6 functional separation of MEC's regulated and
7 unregulated gas sales by April 30. Is there any
8 disagreement about that? I am not hearing any so
9 I'll go on with my next thought then.

10 The last Commission meeting before April 30
11 is April 26 and, just as a practical matter, items
12 for the April 26 agenda need to be submitted by
13 April 20. So that's the time frame that I am
14 looking at here for purposes of our discussion.

15 I will also note that the emergency rules
16 put in place in the -0016 docket calls for the
17 implementation plan to be submitted by MEC by
18 February 14. Now, with that in mind at this point I
19 would ask the parties what their thoughts were as
20 far as how to proceed in this matter.

21 MS. BUELL: Your Honor, just to make absolutely
22 clear, you said you want to talk about the docket

1 with the earlier deadline. You are talking about
2 05-0017?

3 JUDGE ALBERS: Right.

4 MS. BUELL: The functional separation
5 provisions for MEC?

6 JUDGE ALBERS: Right.

7 MS. BUELL: And that has a deadline of April 30
8 and you said the Commission needs to act by the
9 26th?

10 JUDGE ALBERS: Just because that's the last
11 scheduled meeting before the 30th.

12 MS. BUELL: And anything that needed to be
13 turned into the Commission has to be turned in by
14 when?

15 JUDGE ALBERS: April 20.

16 MS. BUELL: April 20, okay. Your Honor, since
17 the emergency rules require the Company to submit an
18 implementation plan to the Commission by February
19 14, now, Staff doesn't necessarily believe that this
20 needs to be done within the Docket 05-0016 because
21 that's just the rulemaking. But Staff's thinking
22 was that since the Company will be submitting an

1 implementation plan on February 14, that it would be
2 appropriate for the Company to lead off in the other
3 Docket 05-0017, not necessarily that same day if
4 that's asking the Company to do too much on the same
5 day, but perhaps the Company could file testimony in
6 05-0017 on February 15 since Staff's presumption is
7 that the implementation plan and any filing by the
8 Company would be very similar.

9 MR. JARED: Your Honor, I think that's very
10 close to what we were going to suggest. I think
11 that's a good idea in general. The February 14 plan
12 is going to require an analysis of the proposed
13 rules and the filing obviously of the implementation
14 of the plan and at the same time I think it is going
15 to be necessary to review the emergency rules to see
16 how they could be modified, if necessary, to form
17 the permanent rules which will be submitted in
18 -0017. So the timing is very close. I would agree
19 with counsel on that.

20 I think we would like to submit proposed
21 permanent rules with testimony, if that's necessary,
22 very close to the February 14 date. That's a

1 Monday. Perhaps later in that week would be, I
2 think, a perfectly appropriate date.

3 MS. BUELL: Before we go any further, I think
4 we have a major understanding -- misunderstanding,
5 rather, as to what Docket 05-0017 does. That is not
6 a rulemaking. Both the emergency rules and the
7 first notice rules are part of Docket 05-0016. The
8 other docket, -0017, requires the Commission to put
9 in place provisions for MEC regarding functional
10 separation. It is not a rulemaking at all.

11 JUDGE ALBERS: I should step in here at this
12 point. As I -- the reason I mentioned the February
13 14 date established in the emergency rules is that
14 looking at Docket -0017, clearly the Commission is
15 required to -- I will quote from this recent statute
16 here -- "shall adopt provisions requiring functional
17 separation." I don't look at that and see that as
18 necessarily requiring rules regarding that. That
19 could conceivably -- I am willing to entertain
20 arguments otherwise but, you know, just my initial
21 reading here is that the Commission could accomplish
22 that goal by adopting provisions in Docket -0017

1 that are not part of a rule.

2 And, I don't know, I mean, the emergency
3 rules exist because the statute required them to
4 exist. The thought that crosses my mind then and,
5 please, you know, share your thoughts about this
6 with me, if the statute applies only to MidAmerican,
7 and generally speaking the Commission's rules are to
8 be generally applicable to all utilities across the
9 board, do any of you believe that you are
10 necessarily required to adopt permanent rules as
11 well. And I would -- maybe from your other comments
12 I would maybe think that you do, Mr. Jared. But if
13 we adopt the emergency rules as required to govern
14 the sale of the gas for now, then adopt provisions
15 as the statute calls for through Docket -0017, does
16 anyone still believe we need to adopt permanent
17 rules?

18 MS. BUELL: Staff does not, Your Honor. In
19 fact, Staff's intention here, if things go according
20 to schedule, is to let the emergency rules run out
21 in the 150 days and then, if appropriate, move to
22 withdraw the first notice rulemaking.

1 JUDGE ALBERS: Okay.

2 MS. BUELL: Because Staff's presumption here is
3 that the provisions for functional separation
4 regarding MEC will be covered in Docket 05-0017,
5 thus no longer necessitating a rulemaking.

6 JUDGE ALBERS: Looks like you are thinking
7 about it, Mr. Jared.

8 MR. JARED: Well, I guess I am a little
9 confused. It seemed like the rules would provide
10 the framework for the provisions. If there are no
11 rules after the 120-day period --

12 MS. BUELL: It is 150 days.

13 MR. JARED: 150-day period, then I am not sure
14 what the, quote, provisions, unquote, would show or
15 what the testimony that we would file in
16 mid-February would show. If it is going to be
17 simply a description of MidAmerican's gas sales
18 operations, how it is organized, how it operates,
19 this type of thing, then that's fine. We can
20 certainly do that and we would be happy to meet with
21 Staff and parties to the case, before, after,
22 during, at any time to discuss that with them. But

1 absent rules, I am not sure what the, quote,
2 provisions would show or what they would be.

3 JUDGE ALBERS: I am just trying to figure out
4 for myself how the statute would function. And,
5 Mr. Wu, do you have any thoughts at this point?

6 MR. WU: No, I have to admit sharing a little
7 bit of the same confusion that Mr. Jared does. CUB
8 does not have a view either way right now as to
9 whether the new Section 7-210(i) requires provisions
10 or something more along the lines of traditional
11 rulemaking. It is just not an issue that I have had
12 a chance to grapple with yet.

13 JUDGE ALBERS: You know, I was trying to
14 prepare myself for the hearing today and in looking
15 at the new statute, in recognition that generally
16 rules apply across the board, but at the same time
17 by its own terms the statute, you know, only applies
18 to one company, and there being no express
19 requirements for permanent rules to have been
20 adopted, I wasn't sure if that was suggesting -- if
21 the legislature was suggesting to the Commission
22 that emergency rules are simply needed in the

1 interim since such sales are occurring now and
2 simply adopt provisions through a Commission order,
3 you know, for the permanent solution, so to speak.

4 MS. BUELL: Your Honor, Staff's position is
5 that since the legislature made the distinction
6 between provisions and rules, that such a
7 distinction exists and that the emergency rules are
8 temporary measures until the Commission adopts
9 provisions for functional separation.

10 JUDGE ALBERS: I too struggled with this when I
11 tried to prepare for this so I was just trying to
12 put together what I do know to try to make these two
13 dockets reconcilable. You know, part of the reason
14 I am also confused is that the emergency rulemaking
15 --

16 MR. FEELEY: Your Honor, this is John Feeley.
17 The emergency rules aren't in effect so it is not
18 really a rulemaking for emergency rules.

19 JUDGE ALBERS: Well, now, but as far as the
20 existence of the emergency rules, the emergency
21 rules themselves, they do not expire until June 13,
22 but we need to have some type of provisions adopted

1 by April 30. And so with that in mind, I was --
2 that suggested to me as well the legislature perhaps
3 did not necessarily intend that there be permanent
4 rules since the emergency rules -- since permanent
5 rules could not, I don't believe, actually be in
6 place by April 30, just as a matter of abiding by
7 the 45 days for first notice and the 45 days for
8 JCAR to consider rules and the second notice. Just
9 as a practical matter, it didn't seem is to me that
10 the timing would work such that we would have
11 permanent rules in place by April 30. So that
12 suggested to me the legislature intended for us to
13 have separate provisions, provisions outside of a
14 rulemaking that would accomplish the directive that
15 the Commission have some type of provisions
16 requiring the functional separation.

17 And, again, I am willing to entertain any
18 other interpretations just to help us figure out how
19 to proceed here.

20 MR. FEELEY: John Feeley again, and I think as
21 Ms. Buell has indicated, Staff's understanding, I
22 believe, is the same as yours that you just

1 expressed there.

2 JUDGE ALBERS: Okay. Did you have any other
3 thoughts?

4 MR. JARED: I was just seeing the possibility
5 of a permanent rule as being the framework for the
6 establishment of the provisions. Absent that, I am
7 not quite sure what the provisions would be. I
8 agree with you that as a matter of practicality that
9 the calendar wouldn't permit the adoption of a
10 permanent rule by April 30.

11 JUDGE ALBERS: That is probably the main
12 concern I have, is just, you know, complying with
13 the law in some fashion, and I just don't know how
14 we would get a permanent rule in place by April 30
15 since really we only have roughly -- roughly about
16 90 days as it is to do that and 90 days is a minimum
17 notice requirement for first notice. The 45 days
18 for first notice and the 45 days for JCAR to
19 consider, you have 90 days right there.

20 MS. BUELL: As I indicated, Your Honor, Staff
21 thought that the solution to this would be to put
22 testimony into the record in 05-0017 making

1 recommendations to the Commission with respect to
2 the type of provisions that should be imposed on
3 MidAmerican to require functional separation, and
4 then letting the emergency rules expire and if
5 appropriate withdraw the first notice rulemaking.
6 And previously I was merely suggesting that since
7 the Company was going to be submitting an
8 implementation plan to the Commission on February
9 14, that it seemed the most practical thing to do
10 that the Company would go first in 05-0017 with some
11 recommendations for the provisions that would be
12 imposed.

13 JUDGE ALBERS: Well, let me ask this. Has the
14 Company started with an implementation plan? Do you
15 have something you are working on now?

16 MR. JARED: We are working on it, yes, Your
17 Honor.

18 JUDGE ALBERS: Is that something that just
19 hypothetically at this point could be filed prior to
20 February 14, just to help us keep the ball rolling
21 so we can have something in place by April 30?

22 MR. JARED: Probably by a few days, yes.

1 JUDGE ALBERS: Every day helps. Is that
2 something the Company could file with supporting
3 testimony on that same time? When I say file, file
4 in -0017.

5 MR. JARED: So I am clear, we would file -- the
6 implementation plan would get filed on or slightly
7 before the 14th in -0016.

8 MR. FEELEY: No, no, that's separate from
9 -0016.

10 JUDGE ALBERS: Maybe calling them together has
11 created some confusion as far as which one we are
12 talking about. Let me put it this way. Pursuant to
13 the emergency rule currently in place, the Company
14 is still to file an implementation plan by February
15 14. But as far as the -0017 docket, just so we can,
16 you know, get the ball rolling, so to speak, could
17 we have -- is it possible to have the implementation
18 plan filed earlier in -0017 with supporting
19 testimony at the same time so we can, you know, get
20 a schedule put in place and allow Staff and CUB to
21 respond to that and we can kind of go from there?

22 MR. JARED: I apologize for my denseness. The

1 implementation plan, you want that filed in -0017?

2 JUDGE ALBERS: Well, just so we have something
3 in the record in -0017 to work from.

4 MS. BUELL: Your Honor, I think there is a
5 question as to whether the implementation plan needs
6 to be filed in either docket. Staff's reading of
7 the emergency rules, it says that a plan has to be
8 submitted to the Commission and that the Commission
9 has 45 days to review it at which time the
10 Commission shall approve, reject or initiate a
11 hearing to investigate the implementation plan.
12 Now, that to me suggests that there could even be a
13 third docket opened with respect to this issue, so.

14 JUDGE ALBERS: I think you are right,
15 Ms. Buell. I see where you are going with that.

16 MS. BUELL: So I am not sure the implementation
17 plan needs to be filed in either of the existing
18 dockets.

19 JUDGE ALBERS: I see your point with -0016.

20 MS. BUELL: -0016 is a rulemaking.

21 JUDGE ALBERS: I guess that's a correct
22 distinction. But as far as how to proceed in -0017,

1 unless someone has a different idea, maybe that's
2 what you were talking about testimony filing, just
3 so we know where to start with, because if the
4 Commission -- if the Commission adopts the
5 provisions that are called for in the act, in -0017,
6 you know, I envision that as being a traditional
7 type of docket, testimony, both testimony hearing,
8 whatever needs to be done in a traditional type of
9 docket. But just as far as a starting point, that's
10 what I am contemplating. Where do we start?
11 Certainly if the Company wants to just -- and Staff
12 is comfortable with it and CUB is comfortable with
13 it -- just starting with testimony filing in -0017,
14 describing what it believes to be an appropriate way
15 to functionally separate its regulated and
16 unregulated gas sales in Illinois, you know, that's
17 fine with me. I did not know if an implementation
18 plan would help spell it out further in -0017. But
19 if the parties are comfortable with simply testimony
20 being filed in -0017 that would frame the issues,
21 you know, I am not necessarily going to require an
22 implementation plan be filed in -0017. I just

1 didn't know if that would be a useful way to start
2 things off. So any opinions on that?

3 MS. BUELL: That was Staff's thinking too, Your
4 Honor, because any testimony that might be filed
5 would be very simple to the implementation plan.

6 MR. WU: CUB has no objection to that approach.

7 JUDGE ALBERS: Testimony only, Mr. Wu?

8 MR. WU: I am sorry?

9 JUDGE ALBERS: Would you have no objection to
10 the filing of testimony only in -0017?

11 MR. WU: I am basically agreeing where Staff
12 is.

13 JUDGE ALBERS: I just wanted to make sure I
14 understood where you both were.

15 MR. FEELEY: But that testimony needs to set
16 forth what the provisions are.

17 JUDGE ALBERS: Right.

18 MR. JARED: Yeah, this is Bob Jared. Yeah, I
19 think the filing of testimony on February 10 or
20 thereabouts, for example, might be an appropriate
21 way to start. An implementation plan may or may not
22 be a way of assisting the testimony. I guess I

1 don't frankly know at this point. I think we would
2 probably plan on filing some exhibits that would
3 explain the organizational structure and operations
4 and that may take to some extent the part of the
5 implementation plan's role. I don't know at this
6 point, but that just comes off the top of my head.
7 But that seems like an appropriate way to start. We
8 have no objection to that.

9 JUDGE ALBERS: Okay. I would suggest then if
10 we are going to start it off that way, if that
11 testimony is -- you say that would probably be
12 available by February 10 at the latest?

13 MR. JARED: I think we could make that date,
14 Your Honor.

15 JUDGE ALBERS: Okay. If we start it off that
16 way, then I would suggest that we have a status
17 hearing a few days after that, you know, give Staff
18 and CUB some time to look at it and digest it, and
19 then we will meet again and see where to go, how
20 much of a schedule we would need, so to speak. So
21 is there any particular -- let's see, Friday is a
22 holiday for us anyway here at the State, the 11th,

1 that is. How much -- 15th or 16th, as far as
2 people's availability?

3 MR. WU: The 15th would be preferable. I have
4 a deadline for testimony at the end of the week in
5 another matter.

6 MS. BUELL: I am a little bit concerned about
7 the 15th because if we don't get the testimony until
8 the end of the day on the 10th, Staff is not in the
9 office on the 11th, we would only have one day to
10 review it.

11 MR. WU: We could make it the afternoon of the
12 15th.

13 MS. BUELL: Let me just consult with my witness
14 for one moment.

15 (Pause.)

16 MS. BUELL: Staff can live with the afternoon
17 of the 15th.

18 JUDGE ALBERS: I have another hearing at 1:30.

19 Say 3 o'clock?

20 MS. BUELL: Thank you, Your Honor.

21 MR. WU: That is fine.

22 MR. JARED: That is fine, Your Honor.

1 JUDGE ALBERS: Okay.

2 MR. FEELEY: Judge Albers, this is John Feeley.
3 Then in Docket 05-0016 would we just generally
4 continue that to the same date?

5 JUDGE ALBERS: Well, that was my next question,
6 actually. You give me a good lead-in here. Does
7 anyone, in light of part of the discussions, does
8 anyone believe we need to definitely have permanent
9 rules?

10 MR. FEELEY: I would think Staff's motion is it
11 is all dependent on 05-0017. If things go as
12 planned, then no. But we don't want to, you know,
13 get rid of that case yet. We want to keep it open.

14 JUDGE ALBERS: No, and I wasn't suggesting that
15 we dispose of it any time soon. But I guess
16 primarily that question was instructed for
17 Mr. Jared. Would you like to think about that some?

18 MR. JARED: Yeah, I think I would. I guess I
19 am leaning towards joining Staff in their position
20 concerning permanent rules. Again, we saw that as
21 an appropriate way to establish a framework, but
22 maybe we will know more after we get farther into

1 -0017.

2 JUDGE ALBERS: Why don't we just do that then
3 as you suggested Mr. Feeley, just continue the -0016
4 docket to the same time again and see whatever
5 thoughts anyone has on that. So as I see things
6 now, we are going to be receiving direct testimony
7 from MidAmerican in Docket 05-0017 by February 10,
8 setting forth what it believes to be an appropriate
9 and reasonable way to functionally separate its
10 regulated and unregulated gas sales. We will meet
11 again on February 15 at 3 o'clock to essentially
12 determine where we are going to go from there as far
13 as the schedule. And we will also meet again in
14 Docket -0016 that same date and time and if we are
15 willing to continue it further, that depends on
16 people's thoughts on the need for permanent rules.

17 Does anyone have anything else they would
18 like to add or other thoughts?

19 MS. BUELL: One other thing, Your Honor.
20 Before we meet again on February 15, MidAmerican
21 will be submitting its implementation plan to the
22 Commission. I just wanted to make certain that

1 MidAmerican would be submitting that plan to the
2 Energy Division and the director of accounting.

3 MR. JARED: We would be happy to submit that to
4 Staff, whoever would like to receive it.

5 MR. WU: I have one request to the Company on
6 behalf of CUB, if we could receive a courtesy copy
7 of that filing, that would be much appreciated.

8 MR. JARED: Oh, absolutely. I was planning on
9 initially before this meeting filing it in -0016 and
10 you would have automatically received it. I will
11 probably submit it pursuant to code section now, but
12 I will make sure CUB receives it as well at the same
13 time.

14 MR. WU: Thank you.

15 JUDGE ALBERS: And I will just note for the
16 record we may find ourselves with a third docket, as
17 Ms. Buell brought up, once that implementation
18 docket is filed. So we will deal with that when it
19 happens.

20 All right. Any other concerns or thoughts?

21 MS. BUELL: Nothing further from Staff, Your
22 Honor.

1 JUDGE ALBERS: Nothing at this point?

2 MR. JARED: No, Your Honor.

3 JUDGE ALBERS: Anything from you, Mr. Wu?

4 MR. WU: No.

5 JUDGE ALBERS: Okay. Well, thank you,
6 everyone. With that I will continue both of these
7 matters to February 15 at 3 o'clock.

8 (Whereupon the hearing
9 in this matter was
10 continued until
11 February 15, 2005, at
12 3:00 p.m. in
13 Springfield, Illinois.)
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